UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
LORDSTOWN MOTORS CORP., *et al.*,	Case No. 23-10831 (MFW)
Debtors.	(Jointly Administered)
LORDSTOWN MOTORS CORP., *et al.*,	Adv. Pro. No. 23-50428 (MFW)
Plaintiffs.	
v.	
ATRI AMIN AND BENJAMIN HEBERT, ON BEHALF OF THEMSELVES AND SIMILARLY SITUATED STOCKHOLDERS OF LORDSTOWN MOTORS CORP. (F/K/A DIAMONDPEAK HOLDINGS CORP.),	Courtroom No. 3 824 North King Street Wilmington, Delaware 19801
Defendants.	Thursday, August 3, 2023 2:00 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Daniel DeFranceschi, Esquire
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801

(APPERANCES CONTINUED)

Audio Operator: Jermaine Cooper, ECRO

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (CONTINUED):

For the Debtors: Jason Zakia, Esquire
WHITE & CASE LLP
111 South Wacker Drive
Suite 5100
Chicago, Illinois 60606

Thomas Lauria, Esquire
WHITE & CASE LLP
200 South Biscayne Boulevard
Suite 4900
Miami, Florida 33131

For Karma Automotive LLC: James Sowka, Esquire
SEYFARTH SHAW LLP
233 South Wacker Drive
Suite 8000
Chicago, Illinois 60606

For Defendants: Glenn McGillivray, Esquire
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, New York 10020

Henry Jaffe, Esquire
PASHMAN STEIN WALDER HAYDEN
Court Plaza South, East Wing
21 Main Street, Suite 200
Hackensack, New Jersey 07601

Samuel Adams, Esquire
POMERANTZ LLP
600 3rd Avenue
New York, New York 10016

APPEARANCES (CONTINUED):

For Foxconn: Matthew Murphy, Esquire
PAUL HASTINGS LLP
71 South Wacker Drive
Suite 4500
Chicago, Illinois 60606

For the Committee: Deborah Kovsky-Apap, Esquire
TROUTMAN PEPPER HAMILTON SANDERS LLP
4000 Town Center
Suite 1800
Detroit, Michigan 48075

Francis Lawall, Esquire
TROUTMAN PEPPER HAMILTON SANDERS LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, Pennsylvania 19103

INDEX

INDEX

(Proceedings commenced at 2:00 p.m.)

THE COURT: Good afternoon. This is Judge Walrath. We are here in the Lordstown Motors case.

I am going to turn it over to counsel for the debtor to get us started.

MR. DEFRANCESCHI: Good afternoon, Your Honor. Dan DeFranceschi from Richards, Layton & Finger on behalf of the debtors. Thank you for the Court's indulgence today for this hearing.

If it pleases the Court, I would like to turn it over to co-counsel, Mr. Tom Lauria, from White & Case.

THE COURT: All right.

MR. LAURIA: Good afternoon, Your Honor. My name is Thomas Lauria. I'm a partner at White & Case, we represent the debtors in these Chapter 11 cases. I would like to first thank the Court for hearing us today.

Before we get to the two matters before the Court, I would like to provide some explanation of how we got here. I am the architect of this case and given last week's events it's important to me personally that the Court understand the case's premise. It's my hope that we can begin the process today of rehabilitation.

Your Honor, this Court has seen, and I have seen over the last 37 years, numerous boards that have been able to live in denial until it was too late to provide a recovery

to equity and until creditors had become impaired, frequently deeply. The board of Lordstown Motors is not one of these boards. Lordstown board accepted reality.

The company had been engaged in fundraising for a long time. When it became apparent that those efforts, which were needed to cover the cost of getting to scalable production, were unlikely to bear fruit the board took a step back. Recognizing that without meaningful revenue, continuing full scale operation would only result in a diminution of value over time and ultimately no distributable value.

In recognition of their fiduciary duty to maximize value and recovery for stakeholders the board made the difficult decision to implement an orderly winddown of the company's affairs. Efforts were undertaken to see if we could develop a strategy to quickly resolve the material contingent and disputed claims and issues surrounding this company either out of Court, or through a prepackaged plan, or, at the very least, a pre-negotiated plan.

When those efforts failed, the decision was made to file Chapter 11 in order to facilitate the reduction of the cash burn that the company was suffering and to utilize the unique tools provided by Chapter 11 to get to a reasonable and responsible finish line as quickly as possible. The ability to quickly and efficiently get to a

finish line would be the driver of success which we interpret as maximizing distributable value for all stakeholders, whoever that value is supposed to go to.

In that regard, we were focused on two things, Your Honor:

One, the ability to maximize the value of the debtors' assets through a controlled reliable sale process that would have a defined ending and a defined -- a defined beginning and a defined ending with Court oversight and the ability to provide protections unique to Chapter 11, including selling the assets free and clear of all interests.

The other thing we focused on was the ability to use the Bankruptcy Court as a centralized form for the efficient and fair liquidation of all claims. I don't think either of these operational pillars are particularly novel. I think they're blackletter law. I think they're baked and steeped in the policy of the bankruptcy code.

Of critical import we recognize that every day that passed would cost this estate and, thus, our stakeholders money. This is true in or out of Court. So, the real difference maker here is the ability to use Chapter 11 to get to the finish line quickly. This is true and it would provide benefit for almost everyone involved in the case including Karma. Getting a massive award that would be uncollectible would be of little value. And an injunction to

prevent a dead company from using intellectual property would be a largely moot point.

Now I did say it would be beneficial for almost everyone. Arguably, Foxconn is in a better spot if the company just implodes. They could buy the wreckage for almost nothing and they would have no risk that somebody would use the technology and equipment that had been developed by this debtor at a cost of nearly a billion dollars to compete against whatever business Foxconn ultimately pursued in the electric vehicle space.

What is clear here though is that absent bankruptcy this debtor faced a classic race to the courthouse situation where the debtor would ultimately be dismembered, what's left of it, in a disorderly fashion resulting in unequal recoveries based strictly on who gets to the judgment first.

To address all of this, to have a successful outcome here, we recognize that we need the Court's help and support. And to get that I need your confidence. One thing I know for sure the debtor and its board should not be punished for accepting reality and trying to do the right thing for the benefit of all stakeholders.

So, Your Honor, before I turn to an update on the bidding procedures motion, which is one of the two matters before the Court today, I will pause and see if the Court has

any questions.

THE COURT: I have no questions at this time.

MR. LAURIA: Thank you, Your Honor. One thing I should note, I know how the Court sometimes is uncomfortable with counsel just testifying from the podium. Each of the statements that I just made, except for those that are clearly my own opinion and views, rely on evidence that has been admitted into the record, principally the first day declaration. If it pleases the Court, I can follow up this hearing with a list of citations to each of the statements.

THE COURT: Okay.

MR. LAURIA: So, Your Honor, if we may, I'd like to turn to the bidding procedures motion.

THE COURT: You may.

MR. LAURIA: Thank you. I would like to focus on two things, which I believe are the two items that the Court directed us to address at the close of the hearing last Thursday. Number one, to take measures to make sure that all potential bidders are informed of the Karma issues and the Karma situation. Two, to update the Court on the process in our bidding procedures at this time.

With respect to the first item, promptly after the hearing on the morning of July 28th, that was the morning after the last hearing, the debtors, through their investment banker, Jefferies, uploaded the following documents or links

with detail regarding the Karma litigation to the VDR, virtual data room: a copy of Karma's operative complaint filed in the Karma action in the Central District of California; a copy of Karma's objection to the debtors' bidding procedure motion; copies of the debtors' latest securities filings which include detailed disclosures regarding Karma. These are, in particular, Lordstown Motors 10-K for fiscal year ending December 31st, 2022 and Lordstown Motors 12-Q for this first quarter of 2023.

We also provided a link to where all of the company's public securities filings are located and a link to the debtors' claims agent page where bidders give you all pleadings filed on the Bankruptcy Court's docket. Prior to uploading these filings, the virtual data room had already pointed bidders to the financial information and disclosures on the debtor's website, which website includes links to the debtors' latest security filings.

To ensure that all interested parties were aware of the Karma assertions and the additional uploads, on July 28th, 2023 we also sent an updated process letter to all parties under non-disclosure agreements. By that I mean parties from whom the debtors might receive an indication of interest. The revised process letter disclosed the Karma issue on the first page and referenced the documents with more detail regarding Karma's allegations that had been

uploaded into the virtual data room.

For full transparency the debtors also specifically directed bidders to the Karma litigation in the cover email conveying the updated process letter. The language added to the process letter was as follows:

"As disclosed in the company's filings, including its 10-K's and 10-Q's since the third quarter of 2020, the company has been involved in ongoing litigation with Karma Automotive LLC in which Karma alleges claims against the company and certain of its current and former employees including misappropriation of trade secrets, conspiracy, breach of non-disclosure agreements, interference with employee contracts, and violation of computer fraud statutes against the company, and certain of its current and former executive officers and employees.

Karma's claims are pending in the United States District Court for the Central District of California in the matter styled *Karma Automotive LLC v. Lordstown Motors LLC, et al.*, Case No. 20-02104-JVS-DFM, filed on October 30th, 2020. On July 20th, 2023 Karma filed an objection with the Bankruptcy Court to the company's motion for approval of the bidding procedures. In the objection Karma alleges that it holds ownership interest in certain of the intellectual property that Karma alleges was misappropriated by the company and that the company would, therefore, be precluded

from selling subject assets pursuant to Section 363 of the Bankruptcy Code prior to adjudication of the party's respective rights.

If Karma prevails with respect to its asserted intellectual property interests such an outcome could have an impact on the assets available for sale including the virtual data room are (1) links to the company's public filings which include a description of the Karma litigation; (2) the operative complaint filed in the Karma litigation and; (3) the objection.

At a hearing on July 27th, 2023 the Bankruptcy Court continued its ruling with respect to the company's proposed bidding procedures to a yet to be determined date and time during the week of July 31st, 2023. Nevertheless, all proposals are due at 5:00 p.m. ET on July 31st, 2023 on the terms set forth below.

After sending the revised process letter, the debtors' advisors continued to promptly respond to inquiries from potential bidders including five inquiries related to Karma, plus one more about ongoing litigation in general which were fielded by phone or email inquiry after sending the revised process letter.

Prior to the last hearing, litigation was often a general topic of discussion and conversation with potential bidders. Most were aware of the Karma litigation, but did not

appear to be focused on it, nor did they ask many questions relating to Karma."

Your Honor, it is our hope that that disclosure satisfies the Court's concerns about disclosing to potential bidders the situation with Karma and the potential issues that it presents.

THE COURT: Okay. Can you give me a status as to whether any indications of interest were received Monday.

MR. LAURIA: Yes, I can, Your Honor. Thank you.

We have received a total of 13 indications of interest. Four of those are to acquire all or substantially all of the company's assets as a going concern. Four of them are for different components of the company's assets. Five of them are from liquidators who would like to buy some or all of the company's assets either for an upfront cash fee or for a fee and a shared participation in the proceeds from their sale. Of those bidders only one has specifically included a condition regarding Karma, but all are actively going forward at this time.

Now, I will tell the Court that some of these proposals have big issues and problems, and some of them are more promising. At this time we have not eliminated any of the proposals from consideration and we are doing what I think this Court would expect us to do which is to work with the bidders, to respond to their questions, and work to get

either one bidder or some aggregation of bidders together to provide a proposal that can be brought forward for stalking horse protection by the deadline which I believe is August 17th for a submission for stalking horse proposals so that we can proceed with the sale process.

THE COURT: Well, that is the proposed deadline.

MR. LAURIA: That is the proposed deadline which is what we have been telling everybody to abide by.

THE COURT: Okay.

MR. LAURIA: In that regard, Your Honor, I'm glad that you focused on that because that is certainly a point of focus for us and has been something that we have given a lot of thinking to since last Thursday. Your Honor, I think the important thing for this estate is to preserve optionality at this point. We currently have 13 interested parties who are engaged in looking at a transaction to buy some or all of the assets of the company. If we were to hit the pause button now and restart it later it's unclear how many, if any, of those bidders would come back.

What is important, though, is that we do everything we can to capture value when and if the opportunity to do so presents itself. I think that one thing this Court knows from experience is that if there is a way that we can capture value we will use all of our creativity and resources to bring that opportunity to the Court for its

consideration. And if we are not there by any of the deadlines that are set forth in the proposed bidding procedures we likely will be coming back to extend or modify. If we don't get that decision right one thing that I know from experience over the years, over the last 20 years with this Court, is that you will tell us.

THE COURT: I am not shy, Mr. Lauria. You know that.

MR. LAURIA: I do. I am resourceful, you know that.

THE COURT: I do.

MR. LAURIA: So, Your Honor, under the circumstances what we would like to request is that the Court enter the order proving the bidding procedures and allow us to move forward. The bidding procedures make clear that all parties' rights are reserved, including Karma's. And we are assuring the Court that if we can't deliver a transaction, we will not be trumped to deliver a transaction.

Things change. This Court has frequently seen situations where enemies become friends and vice-a-versa. We are constantly looking for a path. And if we find that path the deadlines and the timeframes set forth in the bidding procedures are consistent with our objections of maximizing value here.

THE COURT: All right. Well, let me hear if

anybody else wishes to be heard with respect to the proposed deadlines.

MR. SOWKA: Yes, Your Honor. James Sowka on behalf of Karma Automotive LLC.

Your Honor, notwithstanding the indications of interest that were represented to the Court, Karma stands on its prior objections and believes that it would be inappropriate to proceed with the proposed timelines mainly because Your Honor has not lifted the stay to permit the trial in California to go forward. To the extent the bid procedures, as proposed, proceed it would potentially raise a situation where the property interest could be at dispute before this Court in some sort of contested sale hearing or adversary proceeding while they're also at issue in California. We just think that that duplication of resources isn't going to benefit any of the parties.

It may make sense to continue the hearing on the sale procedures motion another week or two and see where the debtors are at with respect to the stalking horse bidders. To the extent they want to proceed with bidders that don't implicate the issues that are pending in California, Karma may have no objection at that point in time, but it sounds like the debtors are still proposing a process where they may attempt to sell assets that are at issue in the California litigation and based on that Karma objects.

THE COURT: All right. Thank you.

Anybody else?

MS. KOVSKY: Your Honor, Deb Kovsky, Troutman Pepper, for the committee.

The committee does have concerns about extending a process relating to a going concern sale in light of the Karma issues. That said, we think that the IOI's that came in are substantial enough that we think it makes sense to continue this process and continue marketing for some period of time in order to determine is there actually going to be a going concern offer that materializes. (Indiscernible) moving forward on an auction of the debtors' other assets or remaining assets should occur in any event.

We had, in our comments that we worked out with the debtors prior to the last hearing, included language in the proposed order expressly reserving the committee's right to come back into Court and seek an early termination of the sale process if it appears that its going to be futile or a waste of the estate's resources or if, perhaps, the debtors ought to be pivoting to a sale of solely the hard assets that would not implicate any IP issues.

So, the committee is keenly aware of the cash situation in these cases. We appreciate that the debtors filed with substantial unencumbered cash. We also appreciate that the total unsecured creditor pool may in the end

substantially exceed that amount of cash that there is significant burn. We are supportive of any process that generates additional value. So, we are supportive of moving forward with the sale process as proposed, but on a short leash and subject to the committee's rights to pivot if necessary.

THE COURT: Anybody else?

MR. MURPHY: Your Honor, its Matt Murphy of Paul Hastings on behalf of Foxconn, if I may.

THE COURT: You may.

MR. MURPHY: So, Mr. Lauria, in his testimony from the podium, alleges that we're trying to steal the assets or waiting to steal the assets. I think it's worth noting that we did not object to the bid procedures. I think it's also worth noting that we were in discussions on a prepetition basis with the debtor, the now debtor, and I think the only race to the courthouse that happened was by the debtor.

I encourage the committee, as a representative of the creditor body, and I know they will, to stay in touch with the cash burn, the 13-week cash flow forecast. I think it's the testimony from the last hearing that was roughly $6.2 million a month without including committee professionals. I think there is a 77 day, or thereabouts, timeline for the sale, ball parked at $15 million.

I just hope we're staying in touch with --

speaking of accepting reality, I hope we're staying in touch with the process we're running here and if it's really a process that's going to benefit creditors or it's a process designed for other reasons.

Thank you.

MR. LAURIA: Your Honor, if I may briefly be heard.

THE COURT: You may.

MR. LAURIA: I'm prepared to stipulate on the record that we will not use the sale process in any way as an effort to end run the Karma litigation. If we get to a point where we have a proposal that requires resolution to Karma issues, we will sort out a way to get that done without coming to you to ask you to tread on the rights that the Court has granted Karma with respect to the California litigation.

THE COURT: Let me ask counsel for Karma, has the Court in California confirmed the trial date will proceed as originally scheduled, September 5th?

MR. SOWKA: Your Honor, the Court -- there is a one-week delay. So, the trial is scheduled to commence September 12th. We will proceed accordingly to the trial schedule order that was previously entered.

THE COURT: And that is approximately two weeks, is that correct?

MR. SOWKA: It is 26.5 hours per each side for, you know, testimony and evidence. So, we're projecting two to three weeks, likely, to complete the trial.

THE COURT: Mr. Lauria, did any of the potential bidders, and maybe you need to refer to a witness for this, have any concern about the timing of the sale process as proposed by the debtors?

MR. LAURIA: Your Honor, I don't specifically know that. I do believe --

THE COURT: Does Mr. Kroll know the answer to that?

MR. LAURIA: I don't know. What I was going to say, Your Honor, is that I think they're all aware of the proposed timeline and I think the ability to buy a certain date come back in with stalking horse protection is going to be important to getting people to put their best foot forward. It may be that we get bids that have conditions around timing, I would expect that. That all feeds into our value maximizing algorithm. There may be a scenario where we have to seek to resolve certain disputes not by Court order, but by negotiation and agreement in order to be able to realize value.

You know, I think the thing that I can assure the Court is that if that math shows that we need to be in a position to bring a sale to this Court by a date and that the

Karma litigation won't be resolved by that date we are going to have to do what we have to do. I think the Court knows what I'm talking about to try to open the door. We are not going to come to this Court and say, hey, let's end run the trial. What we are going to have to do is find a path.

Again, I think as this Court knows, from past experience, we have found paths in very difficult situations to deliver value. We will use all of that energy and creativity to deal with the hearing. We may fail. We may fail, but I think preserving the option is at no loss to anybody. It's only upside for the estate.

THE COURT: Well, let me just say this, even in the absence of the Karma issue I am concerned with the timing of the sale process. Given the debtors' cash on hand I am not certain why it needs to proceed as quickly as the debtor proposes. I will make no suggestion as to any nefarious reason for that, it just seems that it is too quick. I also note that the debtor had suggested that I should not grant relief from the stay to let the Karma case proceed because they had to focus on the sale, but since relief has been granted, I am wondering how the debtor can address both.

It appears that given the indications of interest that the debtor has generated substantial interest in selling its assets. I am not prepared to put a break on that at this time. And I think, at least, we need to see if a stalking

horse can be -- a stalking horse agreement can be realized, but in the absence of that I think the parties who are interested in the sale ought to see the debtors' proposed form of order and form of asset purchase agreement.

I am not prepared to set an auction at this time until we see, or at least until the Court sees, what are viable bids and path forward as the debtor is describing it. I would push the deadlines out one week -- well, let me see when Labor Day is. I would like to see an additional week, the 24th of August, for stalking horse bids and the 8th of September for a bid deadline.

Before there is any litigation or a proceeding to a sale hearing I think the Court and all parties have to know what the terms are of the bids that the debtor wishes to proceed with. So, a bid deadline and auction, and then I think we need more time for parties to evaluate the proposed winning bid that the debtor may select.

MR. LAURIA: Your Honor, if I may make one suggestion with respect to the sale hearing at the end.

THE COURT: Yes.

MR. LAURIA: As the Court well knows, it's a lot easier to extend a deadline that has been noticed out or to adjourn a hearing that has been noticed out then to set one on short notice. So, I would just ask that we have a holding date. And the Court can adjourn that hearing on its own

motion, or at our request, or at Karma's request, or at any other party's request, but I'd like to have a date that we can be working toward. I think it helps us with the bidders.

I think deadlines are good, people tend to expand the referred time permitted. I would like to have an outside date, a sale hearing date recognizing at this moment it's not clear that we will be able to go forward. If we, at least, have a hearing date we will have something that everybody can think about and work toward.

THE COURT: Well, your original sale hearing date of 9/12 isn't going to work.

MR. LAURIA: Understood.

THE COURT: Well, I will ask the parties to look at the first week of October. If we say October 5th or 6th -- let me confirm with Ms. Capp that I'm not scheduling something -- October 6th is not good, but October 5th is okay.

MR. LAURIA: Your Honor, the debtors will make that work for us.

THE COURT: Why don't you do, why don't you consult with the parties. We will make it at 10:30. I am not going to micromanage the reply and objection deadlines, but if we work off of the August 24th to get to October 5th I will ask the parties to consult about that. Again, this is subject to all of this being canceled, continued, adjusted

depending on what bids are, in fact, received and which path the debtor elects to go forward with.

MR. LAURIA: Understood.

THE COURT: All right. If you will submit a form of order under certification of counsel.

MR. LAURIA: Will do. Thank you, Your Honor. Your Honor, unless there is anything else on this matter I will turn the microphone, screen, and podium over to my partner, Jason Zakia, to address the second matter on the agenda for today.

THE COURT: All right. Mr. Zakia.

MR. ZAKIA: Good afternoon, Your Honor. Jason Zakia of White & Case for the debtors.

The second matter on the agenda is the debtors' motion for preliminary injunction extending the automatic stay and the main adversary proceeding. If I could lay out for the Court we have consulted with counsel for the defendants. I am going to try not to screw that up because the defendants are the plaintiffs, but the counsel for the defendants in the adversary proceeding, the plaintiffs in the underlying case, and I think we have an agreed path forward with regard to the evidentiary portion which should be fairly brief.

First, both parties have agreed to the admission of all exhibits offered by each other with a couple of

qualifications. So, for the debtors, Your Honor, we offered Debtors' Exhibits A through L. Those are all exhibits to the Turetsky declaration that can be found in Adversary Docket No. 4. Exhibits A, B, C, D, and E are the operative complaints in the various underlying litigations. So, those are, obviously, being offered only to establish the allegations made in those cases and not for the truth of any matter asserted. And with that qualification I believe the defendants are willing to stipulate to the admission of all of the debtors' exhibits and I would ask that the Court admit them at this time.

THE COURT: Any objection?

(No verbal response)

THE COURT: They will be admitted as described.

(Debtors' Exhibits A through L received into evidence)

MR. ZAKIA: Thank you. I will let defense counsel handle it. The debtors are going to also stipulate to the admission of all the defendants exhibits, but I will let them present that when their case comes up.

The debtors have one witness, Your Honor, that's Adam Kroll who you may remember from last week. We are going to present his direct testimony live. It will be very brief. So, at this point I will call Adam Kroll.

THE COURT: All right. Well let me ask if the respondents wish to move their exhibits in first.

MR. MCGILLIVRAY: Good afternoon, Your Honor. Glenn McGillivray from Bernstein Litowitz Berger & Grossmann on behalf of defendants in the adversary proceeding. My co-counsel, Henry Jaffe, from Pashman Stein is here with me today as well along with co-counsel from Pomerantz.

We can handle the moving of our exhibits which were submitted with two declarations from Ankita Sangwan, and we have reached agreement on the admission of those exhibits as well. The one caveat is there is an exhibit (indiscernible) which is an email exchange to Ms. Sangwan's declaration that the parties have agreed, again similar to the pleadings in other cases, reflects the positions of the parties and isn't being offered for the matter asserted. With that caveat we would move to admit all of the exhibits we submitted with those two declarations.

THE COURT: All right, let me ask both parties, do you wish to seal any of them? I know there had been motions to seal filed.

MR. MCGILLIVRAY: We --

MR. ZAKIA: So --

MR. MCGILLIVRAY: Go ahead.

MR. ZAKIA: I'm sorry. I was going to say, Your Honor, I believe that the parties have now filed redacted versions that can be publicly disclosed of each of those exhibits, and so there would be no need to seal the exhibits,

we can use the publicly-filed versions, which is all we intend to use here.

MR. MCGILLIVRAY: Yes, Your Honor, we agree with that. We filed public versions of any sealed exhibits yesterday as well and we plan to use those.

THE COURT: So it is those that are being admitted then, just to clarify? Okay.

MR. ZAKIA: Yes, Your Honor. Thank you very much for the clarification.

THE COURT: Okay. Then --

MR. MCGILLIVRAY: Yes, Your Honor.

THE COURT: -- by agreement, I'll admit them then.

MR. ZAKIA: So with that, Your Honor, debtors call Adam Kroll.

THE COURT: All right, Mr. Kroll, I'll have the clerk swear you in.

THE CLERK: Please raise your right hand. Please state your full name and spell your last name for the court record, please.

THE WITNESS: Adam B. Kroll, K-r-o-l-l.

ADAM B. KROLL, WITNESS, AFFIRMED

THE CLERK: Your Honor?

THE COURT: All right. Mr. Kroll, could you state your name and address for the record?

THE WITNESS: Adam Kroll and it's 27000 Hills Tech

Court, Farmington Hills, Michigan.

THE COURT: All right. Mr. Zakia, you may proceed with direct.

MR. ZAKIA: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ZAKIA:

Q Mr. Kroll, could you please introduce yourself to the Court and tell us what you do for a living, sir?

A Yes, I am our chief financial officer, also an executive vice president. So I oversee all the financial affairs of the company and the cash management, treasury, all -- and play a big role in the strategy and actions that were the bankruptcy and so forth.

Q And could you tell us, sir, when you first joined Lordstown?

A So I joined in late October of 2021.

Q I'd like to focus now, sir, could you explain to the Court your job as it relates to the tracking of actual or forecast expenditures of the debtor?

A Yeah, so we have a very tight process, we have for a long time, where multiple times per week, in terms of payments that are going out, we will -- I approve all of the payments, so I review every single line item of the payments to make sure that it's consistent with my knowledge of what's going on in the company, who we should be spending money

with, what vendors are getting paid, and so forth, as well as, similarly, all purchase orders over $7,500 require my approval.

So we keep a tight lid on the actual commitments that we're making and approve the spend. And then, again, as I started with, subsequently, when the invoices come in, my team reviews them, gets the approval from the businessperson who had requested the spend, make sure that the services were provided or the goods were received, and then it goes into a payment file for which I -- which I provide approval for before the money can leave the company. And then all of the budgeting and forecasting rolls to me as well.

So, personally, I'm involved heavily in our 13-week cash flow forecast that we've been doing like since before I got here in terms of also then making sure we have visibility on what we expect the spend to be.

Q And please explain to the Court how this process works specifically with regard to legal expenditures.

A Yeah, so the legal expenses generally are managed by the office of the general counsel. So, in terms of individual forecasts, they will get forecasts from the attorneys with whom we're working from time to time to help us with our forecasts. You know, at the beginning of the year, we'll do a standard kind of budgeting process to get what the look for the year will be, but from time to time during the year then

the office of general counsel will seek those forecasts or outlooks based on activity. They'll certainly get updates when there's any material changes. You know, for example, when we have a trial date and it gets moved, then, you know, they'll relay that to me and to my team. On a month-by-month basis as we're closing books, my team works closely with the office of general counsel to make sure that we've accrued all the proper legal expenses in the -- in the financial statements.

Q And are you generally familiar, sir, with a number of various shareholder-related litigations facing the company?

A Yes.

Q Okay. Specifically, are you aware that there was a group of shareholder class action cases that were consolidated in the Northern District of Ohio?

A Yes.

Q And how about two shareholder class actions that were consolidated in the Delaware Chancery Court?

A Yes.

Q Now, I want to talk to you briefly specifically regarding expenditures related to those matters. In a declaration that you submitted in connection with the debtors' motion and at your deposition that you gave earlier this week, did you offer some testimony about expenditures incurred by the debtors in connection with those matters?

A I did, I did. Both in my declaration and in my deposition, I testified that our costs incurred to date were $5.76 million. I have --

Q And --

A -- subsequently learned -- sorry.

Q No, that's okay --

A So --

Q -- I think you anticipated my next question. You can go ahead.

A So I subsequently learned that we did miss a couple of expenses in that estimate. So that estimate actually is 6.2 million, a little over 6.2 million. However, I had understood at the time that that total, the five -- what was $5.76 million, did not include any of the recoveries from the insurance carriers because the costs of the Diamond Peak directors in the Delaware case are covered by -- we've been receiving coverage for those expenses, for their direct expenses from the insurance carrier.

So it was my understanding at the time that that, which represents about $1.5 million, was not included in the 5.76, which is now 6.2. I've subsequently learned it was actually included. So 6.2 million, what is 6.2 million, includes 1.5 million of payments or costs that were reimbursed or paid by the insurance carriers, and then there's also another 500,000 for which we believe we are entitled to coverage that we will

seek to obtain reimbursement for.
Q Now, could you explain for the Court why it is the debtors have incurred any expenses in connection with the costs of the individual D&O defendants in the Delaware action?
A Yeah, all of the document discovery is provided by the company because the directors -- all the data and so forth is held on the company's -- in the company's possession. So it's --
Q Mr. Kroll -- I'm sorry, I didn't mean to cut you off. I'm going to talk about the company expenses in a second, but have the debtors incurred any or paid any expenses for the representation of the individual defendants, the Ds and Os themselves, in connection with that case?
A I'm sorry. So those are -- so far have been covered by the carrier but for our $500,000 of self-insured retention.
Q Okay. And why with respect to the first $500,000 that weren't covered by insurance did the debtors pay those expenses, as opposed to having the individual Ds and Os pay them themselves?
A Well, we have an indemnity obligation. We have both indemnity agreements with the individuals, as well as being part of our articles of incorporation to indemnify --
Q And does that -- and does that indemnification run to all of the defendants in the Delaware action?

A Yes.
Q Okay. Now, you mentioned, sir, the fact that there was D&O coverage with respect to the Delaware case?
A Yes.
Q Do you have an understanding as to what the limit of the policies that are providing that coverage is?
A Yeah, there's a $10 million first layer and then a $5 million excess. So 15 million total after the first 500,000 of no protection.
Q Do you have an understanding as to how much of that coverage has been exhausted to date?
A It would be the 1.5 million that I referred to earlier that we've paid and, if we are successful, getting reimbursement for the additional 500,000 that we believe we were entitled to, that would make it two million of 15, basically.
Q Now, I want to talk about something that you alluded to earlier. Separate and apart from expenses that the company has paid related to the representation of the director and officer defendants, has the company incurred any of its own expenses in connection with participated in the Delaware lawsuit?
A Yes.
Q And what is the -- why has the company incurred its own expenses?

A Well, as I -- sorry, as I was saying earlier, we -- all the document discovery has come from the company; not from the directors, but from the company. So that discovery needs to happen through the company and, therefore, they're our costs, they're not subject to reimbursement by the carriers.
Q Does the company have a forecast of future expenses it believes it will incur in connection with the Delaware case if the case proceeds?
A Yes, our outside counsel has guided us that it would be about $2 million of company -- pure company costs to do everything that's under subpoena.
Q And could you explain to the Court what your understanding is of the work that would drive that $2 million expense?
A Yeah. So what I understand is there's something like 200,000 documents, something like a million pages that have been delivered. The lawyers are working on trying to figure out what search terms would apply that we would have to turn over. So the documents I mentioned were what was provided to the SEC for their investigation. So what I understand is there's still negotiations happening around what the search terms would be and, therefore, you know, once they know the search terms, then they can look at that 200,000 documents and figure out what, how would you say -- what needs to be turned over, I guess. The lawyers have said and told me

that, you know, we needed a privilege review as well and make sure that all the documents being turned over (indiscernible) are appropriate.

And then what I understand is, I guess the subpoena had provided for wide-ranging -- wide-ranging discovery and potential deposition and testimony of company officers, current company officers, so there would be the deposition preparation and so forth. And also I understand that there isn't an agreement yet that the company wouldn't have to also testify at trial, so that would then be incremental to that as well.

Q Now, switching topics, would you please describe for the Court the role that the company management plays with respect to supervising litigation matters?

A Yeah, I mean, obviously, the litigation itself is important to the company, it puts company resources at risk because of the costs we will incur, it also puts, you know, management's time, other members of the team throughout the company will have to provide, you know, and support any kind of discovery around the company. So -- but the supervision itself is really led by our office of general counsel because, again, we have an important interest in it. And so our office of general counsel takes the lead, directs outside counsel largely. And then our executive chairman, who has appropriate skills, you know, strong skills in that area,

also plays a significant role.

Q Now, stepping away from litigation specifically, could you describe for the Court currently what some of the tasks that the senior management at the company are focused on with regard to the bankruptcy case?

A Well, I mean, the sell side process is taking up time, of course, because we have to put the company into a position and be able to articulate the story and have the data that a buyer will need to know. And I think I testified previously, there's a lot of specialized skills that are necessary to communicate the story and the details that their counterparts would expect.

So there's that. There's just certainly all the bankruptcy reporting is heavy. We had the MOR file to file July 21st, we had the SOFAs and SOLA that went through on the 1st, and those are taxing the system. Our head count is now down since April more than 50 percent, you know, and a large chunk of that is voluntary resignations that every day or every week we have a few people resigning to take other opportunities and many of those are important. So then we end up kind of scrambling to figure out what we need from those people during transition periods and so forth, so that we have and can be efficient as possible.

Q And could you please describe for the Court how, if at all, the continuation of the Delaware litigation will impact

the work of the debtors' management team?
A Well, I mean, it's one more thing, I mean, it's one more task to support. And, again, I think, you know, while I wouldn't be intimately involved, as I said, other folks will be. Obviously, Dan Ninivaggi, our executive chairman, and our general counsel, Melissa Leonard, will be distracted with that. And of course some of those things -- or all of those things take away from other activities. I mean, we need to be talking to our creditors, we have to be responsive to the UCC, to the trustee, and so any more time away from those things just taxes the system and taxes our people.

MR. ZAKIA: Thank you, Your Honor. At this time, no further questions.

THE COURT: Thank you.

Mr. McGillivray, you may cross.

MR. MCGILLIVRAY: Yes, thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MCGILLIVRAY:
Q Mr. Kroll, nice to see you again.
A Likewise.
Q So, before I begin, I just want to make sure we're using the same terminology, some of which Mr. Zakia was using during his direct. When I refer to the Delaware class action, I'm referring to the two shareholder class actions that were consolidated in the Delaware Court of Chancery; is

that okay with you?
A Yes.
Q And then, with respect to the Ohio Federal Securities class actions, I will refer -- filed in the Northern District of Ohio -- I will refer to the consolidated Federal Securities class action as the Ohio securities action; does that work for you?
A Yes. Hopefully, I can keep them straight.
Q So I'm trying to make it a little easier --
A If they were numbers, I'm good with that, but --
Q I'm trying to make it a little easier, but I'll only really be focusing on the Delaware class action and the Ohio securities action, okay?
A Yes, sir.
Q Since the bankruptcy filing, basically, all of your focus at Lordstown has been on supporting the bankruptcy and external reporting; correct?
A Well, no, because -- I mean, yes, that is certainly a big part of what I'm doing, but the sell side itself has taken up time, and then figuring out the -- so, yes, the schedules, right, which I think you would include as external reporting, but it's also the Q&A that we get from the UST, from the unsecured creditors committee, it's reviewing, you know, the declaration or any of my declarations, of course, contributing to the review of any other's declarations or

briefs, you know. Court documents, not just financials, of course, because many of our documents that we file have financial references to them.

So that's certainly a big part of it. And then managing, you know, vendor -- vendor payments, vendor communications, what are we saying, what are we doing, who's getting paid, making sure that we're complying. You know, for all of us, this is our first time through this dance. I know my lawyer friends have been through this a lot, but there's a lot of work figuring out -- making sure does this payment comply with, you know, the order the way we understand it, and, you know, working with our advisers as well to make sure that we're doing everything properly.

Q Mr. Kroll, I appreciate that thoughtful answer. I am going to try to keep my answers to yes-or-no questions and I would appreciate if you --

A Okay.

Q -- would respond in turn, just because we have a lot to get through and I want to make it quick and not take up too, too much time

And so, broadly speaking, was that a yes to my question that since the bankruptcy filing, your focus has been on supporting the bankruptcy and external reporting?

A Sorry, that's why I gave you kind of the long-winded answer, I think the answer is no. I --

Q Okay, I --
A -- I do those things, but that's not collectively exhaustive of what I do.
Q Understood, understood.
Since the bankruptcy filing, Lordstown is no longer producing vehicles; correct?
A No, that's not true, to make sure I'm answering you completely. We stopped -- to be clear, we stopped producing after the petition date around the end of June. So, shortly after the filing, we stopped.
Q Before the bankruptcy, you had a very limited role in terms of managing Lordstown's pending litigations; correct?
A It depended on -- depends on what -- which case it was, but, yes, generally, that's true.
Q And you had little to no involvement in Lordstown's pending securities litigation; right?
A Correct.
Q Generally speaking, your involvement has been particularly limited in the securities basis; correct?
A Yes.
Q You don't manage the recovery reimbursement for Lordstown's D&O insurance policies; correct?
A Correct.
Q So you have no reason to know with certainty what D&O insurance policies cover a specific litigation; correct?

A Correct.
Q At your deposition, you had not reviewed any of Lordstown's D&O insurance policies; correct?
A Correct.
Q Lordstown's office of general counsel is in charge of managing recovery reimbursement for Lordstown's D&O insurance policies; correct?
A Yeah -- I mean, they would take the lead on it, yes.
Q And Lordstown's office of general counsel handles discussions with insurers to determine what D&O insurance policies cover a particular litigation; correct?
A Yes, I think that actually is -- takes up a fair amount of time.
Q And you believe the office of general counsel handled those discussions with insurers in connection with the Delaware class action; correct?
A I believe that they took the lead on that, yes, along with our broker, talking to our broker and lawyers.
Q And now I'll get into some substance that -- some of which you covered with Mr. Zakia.

So it's your understanding that there are $15 million of D&O insurance coverage available for the Delaware class action; correct?
A Yes.
Q And the insurance relating to the Delaware class action

did not deny coverage; correct?
A I am not aware that they have.
Q And the defense costs of the individual defendants in the Delaware class action are covered by D&O insurance; correct?
A Thus far they have been, yes.
Q And the defense costs of Lordstown are not covered by the D&O insurance policy that covers the Diamond Peak defendants; correct?
A That is my understanding, yes.
Q And you mentioned this on direct, for the Delaware class action, Lordstown paid a $500,000 SIR under the D&O insurance policy that applies to the Delaware class action; correct?
A Correct.
Q And Lordstown has received reimbursement from the D&O insurance policy covering the Delaware class action for around $1.5 million in additional expenses on top of the $500,000 deductible; correct?
A Correct.
Q And so I believe in your direct you testified that the total expenses for the defendants in the Delaware class action up to now was around $2 million; correct?
A No, no, no, no, I didn't. What I said was is that the insurance essentially has two million. So what I said is the 1.5 million has already been paid, we've incurred another

500,000 that we believe should be covered and intend to seek recovery on, and that's just the insurance.

So there's 1.5 paid and another 500,000 we're going to seek reimbursement for, so that's the reference to the two million.

Q Right, and all of those $2 million were incurred by the defendants in the Delaware class action; correct?

A Yes, plus -- and then plus the 500,000 retention. So if you're -- sorry, it's -- let me just -- so within the 6.2 million, there's about 2.7 million related expressly to the Delaware actions. And then there's been another -- there is -- sorry -- there's 2.7 million, I believe is the number, within the 6.2 that we're out-of-pocket -- we're out-of-pocket 2.7 and, if we get the other 500,000 out of that, then that would go down by 500,000.

Q Mr. Kroll, at your deposition, you could not tell me a breakdown between the Ohio securities class action and the Delaware class action in terms of what parts of the, at that point, $5.76 million were allocated to each case; correct?

A Correct.

Q And so, since your deposition, you have now received new information regarding what amount of expenses in that total is allocated to each case; correct?

A Correct.

Q Where did that information come from?

A Our office of general counsel -- or Melissa Leonard.
Q And --
A And I know she got them from outside counsel, which is generally the way.
Q And, in your declaration, the total expense figure that you provided was 5.76 million; correct?
A Correct.
Q And the figure that you provided during your direct to Mr. Zakia was 6.2 million; correct?
A Correct.
Q And you received the $6.2 million number from the office of general counsel; correct?
A Correct.
Q And can you tell me what the difference between the 5.76 million number is and the 6.2 million number?
A Yeah, we had missed two invoices from two expert witnesses for about $480,000.
Q And do you know what those expenses were?
A I don't. I know they were expert witnesses, that's all I know.

MR. MCGILLIVRAY: Your Honor, I would just like the Court to know, we weren't able to cross the witness on any of this information at his deposition because he was not --

THE COURT: I understand, but go ahead.

MR. MCGILLIVRAY: I did want to make that clear.

Also, it appears to be hearsay that he's relying on, but I'm fine to proceed forward with the new information that he has received.

THE COURT: Okay.

BY MR. MCGILLIVRAY:

Q So with the $6.2 million total expenses, you said today for the first time that 2.7 million of that is allocated to the Delaware class action; correct?

A Correct.

Q And so, you're a numbers guy, what does that make allocated to the Ohio class action?

A The balance, so like two point -- I guess that would be two point -- or three of that --

THE COURT: All right, we can do the math.

THE WITNESS: Yeah.

BY MR. MCGILLIVRAY:

Q I guess 3.5?

A Yeah. Sorry, 3.5, yeah. Three point five and two point five is --

Q So 3.5 million is allocated to the Ohio securities class action; correct?

A Yeah.

Q Of the 2.7 million, again, today, for the first time, you told us that that 2.7 million includes $2 million that is 500,000 on the deductible, that was paid, and 1.5 million

that was occurred by insurance; correct?
A Yes.
Q And so that leaves a balance of $700,000 that the company was responsible for relating to the Delaware class action; correct?
A No, no, sorry. So one point -- so of the 2.7 million, 1.5 of it has been reimbursed, so we've incurred 1.5 -- 1.7, and then -- but we're seeking another 500,000 of recovery. So there's --
Q And sorry, again, doing math on the fly is difficult, but you have --
THE COURT: But, Mr. McGillivray, is this really important?
MR. MCGILLIVRAY: Nailing down the numbers is important because during the deposition and in their brief they represent that $5.76 million basically could be allocated entirely to the Delaware class action, and we're finding out for the first time that it's probably --
THE COURT: All right, but he said 2.7 is allocated to Delaware --
MR. MCGILLIVRAY: And then --
THE COURT: -- do we need the detail of that?
MR. MCGILLIVRAY: I just am trying to cover what is covered by insurance and what is not.
THE COURT: Well, then ask that question.

MR. MCGILLIVRAY: Yes, Your Honor.

BY MR. MCGILLIVRAY:

Q And so 1.5 million of the 2.7 million is covered by insurance; correct?

A Yes, I think that's right.

Q And then there's another 500,000 that was paid as a deductible that you're going to seek reimbursement for; correct?

A No, no, no. The 500,000 is additional legal costs that are separate from the deductible. So the deductible we have to pay, you can't get recovery for the deductible. These are -- we've received invoices for a half a million dollars of legal time that we think should be recovered, we think the carrier should pay.

Q Understood. So there's an additional 500,000 of the 2.7 million that you are going to seek reimbursement for; correct?

A Yeah.

Q And so that leaves around 200,000 that Lordstown would be responsible for; correct?

THE COURT: I don't think we need to get into this level of detail, okay? I'm going to --

MR. MCGILLIVRAY: Yes, Your Honor, I'm --

THE COURT: -- cut this short.

MR. MCGILLIVRAY: Yes, Your Honor, my apologies.

We'll move on from this point. I'm trying to do some of this on the fly because it wasn't -- we weren't able to do it at his deposition.

BY MR. MCGILLIVRAY:

Q So another number that you mentioned on your direct was a $2 million estimate of costs that you received from Baker Hostetler regarding their representation of Lordstown in connection with a subpoena in the Delaware class action; correct?

A Correct.

Q And those are costs that would not be covered by D&O insurance; correct?

A Correct.

Q And the substantial cost for Lordstown that is not being covered by insurance proceeds in connection with the Delaware class action would be that $2 million estimate; correct?

A Yes.

Q And you mentioned this in your direct, there's around 200,000 documents that Lordstown produced to the SEC and DOJ that plaintiffs in the Delaware class action are seeking; correct?

A Yes.

Q And Lordstown could reproduce all of those documents that have already been collected, reviewed, and produced basically at the push of a button; correct?

A I can't speak to what it actually takes to hand over the documents, if it's a push of a button or if it's setting up a, you know, data room or -- that I'm not intimately familiar with.

Q But it wouldn't cost anywhere near $2 million to get those documents over to the plaintiffs if they were just going to reproduce them without any further work; correct?

A Yeah, that -- sure, but the two million, by -- but I think we've talked about this, the two million doesn't just reflect document reviews, right? And that was my testimony as well.

Q So I think your testimony during your deposition was that the two million reflected discovery costs, but did not include trial costs; correct?

A It doesn't include trial costs, but it does include preparation of officers for depositions, it's my understanding the subpoena is to make management available for depositions. I think the scope, as I even understand it, has been -- there's a lot of back and forth there. So there's testimony.

I understand that the plaintiffs have not confirmed that they don't intend to call anyone from management to the trial, so that would then -- there would be trial prep over and above. So it's -- I don't have a perfect breakdown of the two million, but it's not just, you know, document

review.

Q Understood. And you're not aware of any depositions being noticed in that case for Lordstown; correct?

A No -- I mean correct.

Q Mr. Kroll, you're not a lawyer; correct?

A Correct.

Q And you didn't write your declaration submitted in connection with Lordstown's motion to stay the Delaware class action; correct?

A Correct.

Q Lordstown's counsel wrote that; correct?

A Yes, of course.

Q And the declaration is not something you could have prepared on your own; correct?

A Well, not being a lawyer, sure, I wouldn't -- I mean, you know, up until recently, I wouldn't have known where to even start on what a declaration says, but what -- or what's needed to be said for a legal matter and to have a conversation in court about what the position of the company should be. I think that's what lawyers are for.

Q And you did not review the complaint that was filed in the Delaware class action; correct?

A At the time of my deposition, I hadn't, but since you asked a great deal of questions, I scanned over it to try to understand it a little bit better, but, you know -- I mean, I

can't cite it chapter and verse, certainly not.
Q And you hadn't reviewed it at the time of submitting your declaration; correct?
A Correct.
Q And you have not reviewed any of the other filings in the Delaware class action; correct?
A Correct.
Q And you have not reviewed the Ohio securities class action, correct, complaint?
A Again, since you asked a lot of questions about it in our seven hours, I have since gone back and scanned it. I've scanned all of the cases, so that I tried to understand them a little better.
Q At the time of your declaration, you did not do a claim-by-claim comparison of the Delaware class action and the Ohio securities class action; correct?
A Correct.
Q And you're aware that David Hamamoto is the only defendant that overlaps between the Delaware class action and the Ohio securities action; correct?
A Yes, sir.
Q And Mr. Hamamoto is Lordstown's lead independent director; correct?
A Correct.
Q And that means Mr. Hamamoto does not otherwise have a

position at Lordstown; correct?
A Correct.
Q You have not reviewed any of the derivative complaints that have been filed by shareholders; correct?
A Correct.
Q And when you stated in your declaration that claims in the Delaware class action implicate claims in the other stockholder actions, that is your personal belief and not a legal conclusion; correct?
A Certainly. I don't view myself as capable of making a legal conclusion.
Q And that statement is based on your general, non-lawyer understanding of the cases; correct?
A Yes.
Q When you submitted your declaration, you were not aware of the Court of Chancery's March 7th, 2022 opinion in the Delaware class action denying the defendants' motion to stay the Delaware class action in favor of the Ohio securities class action; right?
A Correct.
Q And you did not review that opinion before submitting your declaration; correct?
MR. ZAKIA: Your Honor, sorry, if I could. I tried to be quiet, but at this point I'm going to object. This is well outside the scope of his direct testimony, which is the

testimony he gave today.

THE COURT: And I'm struggling to see why it's relevant to the motion to stay.

MR. MCGILLIVRAY: Your Honor, the statements in the declaration Mr. Kroll submitted, frankly, are largely attorney-made statements saying the claims in this case implicate claims in this case, and we have a witness, one, who is not a lawyer; two, who had not --

THE COURT: All right, that -- all right, you're getting to argument, but really --

MR. MCGILLIVRAY: I mean, one of the elements of the argument and what they argue in their briefs is the similarity between the cases, the risk that rulings in our case will implicate claims in their case when the Delaware Court of Chancery has already held that that's --

THE COURT: All right --

MR. MCGILLIVRAY: -- not a real --

THE COURT: -- all right, try and sharpen your questions then to make them exactly relevant. You don't have to --

MR. ZAKIA: And, Your Honor, if I could be --

THE COURT: -- ask three questions to get one point across.

MR. ZAKIA: If I could be helpful, Your Honor, we're not offering this witness or his testimony in support

of the point about overlap between the cases, if that's helpful.

THE COURT: All right. Have you even offered his declaration into evidence or do you intend to?

MR. ZAKIA: We do not, Your Honor. We tried to do the direct to avoid this, to kind of --

THE COURT: Okay.

MR. ZAKIA: -- avoid this whole issue.

THE COURT: All right, then focus on what the direct was.

MR. MCGILLIVRAY: Yes, Your Honor, and I only have a couple more points.

BY MR. MCGILLIVRAY:

Q Mr. Kroll, at your deposition, you were aware of settlement discussions regarding the Ohio securities class action; correct?

A Yes. Yeah, my lawyers have kind of advised me of the status.

Q And you're aware that those settlement discussions were more advanced; correct?

A I said I -- I said I believe they are fairly advanced, but I'm not entirely sure.

Q And you also were aware that those settlements would incorporate insurance; correct?

MR. ZAKIA: Your Honor, at this point I'm going to

object to the substance of any settlement discussions, which are not admissible.

THE COURT: Well, the question was it would implicate the insurance?

MR. MCGILLIVRAY: It would include or incorporate insurance.

THE COURT: I'll allow him to answer.

THE WITNESS: Just to clarify, could you repeat your question.

BY MR. MCGILLIVRAY:

Q Sure. In the settlement that we heard discussions about would include insurance proceeds; correct?

A That is my understanding.

Q And at the time of your deposition you weren't aware that the plaintiffs in the Delaware class action had made a settlement demand to the defendants; correct?

A Correct.

Q And you weren't aware that Lordstown had not responded to that settlement demand; correct?

A Correct.

MR. MCGILLIVRAY: No further questions, Your Honor.

THE COURT: Any redirect, Mr. Zakia?

MR. ZAKIA: Yeah, just very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. ZAKIA:

Q Mr. Kroll, at the beginning of his cross-examination, Counsel asked you about your role with regard to dealing with insurers.

Do you recall that testimony?

A Yes.

Q And I think you said that, primarily, the Office of General Counsel dealt Lordstown's insurers?

A Yes.

Q Okay. Notwithstanding the fact that it's not your primary responsibility, are you sure that the only insurance policies that are providing coverage for the Delaware action are the two policies and the $15 million you testified about today?

A That's what I'm aware of, yeah.

MR. ZAKIA: No further questions, Your Honor.

THE WITNESS: But those policies can cover other cases, as well.

MR. ZAKIA: Thank you. No further questions, Your Honor.

THE COURT: Any recross?

MR. MCGILLIVRAY: Just one question, Your Honor.

RECROSS-EXAMINATION

BY MR. MCGILLIVRAY:

Q Mr. Kroll, on direct, we talked about the numbers that were being covered by -- in the Delaware class action and

based on your math, around $13 million would be remaining under the D&O insurance covering the Delaware class action, correct?

A Correct.

And others that -- because they're the same defendants, because, like I said, when I scanned the documents, I understand that the defendants are also in the other cases and the insurance did cover claims or damages in those cases, as well.

Q And one follow-up.

You mentioned on your direct that the lawyers told you that we need to do a privilege review of the documents that were produced to the SEC. Were those documents produced without a privilege review the first time around?

MR. ZAKIA: Objection, Your Honor, to the extent it's calling for attorney-client communications.

THE COURT: I'm going to overrule that.

Can you answer?

THE WITNESS: I don't know the answer. I don't know what they did the first time around.

MR. MCGILLIVRAY: No further questions, Your Honor.

THE COURT: All right.

MR. ZAKIA: Nothing from me, Your Honor. Thank you.

THE COURT: Mr. Kroll, you may be excused.

THE WITNESS: Thank you.

(Witness excused)

MR. ZAKIA: Your Honor, that concludes the debtors' evidentiary presentation, so at this point, the debtors rest.

THE COURT: All right. Do the respondents wish to present their witness?

MR. ADAMS: Yes, Your Honor. Good afternoon, Sam Adams of Pomerantz LLP, counsel for defendants in the adversary action, with Mr. Ameen (phonetic) and Mr. Herbert.

We previously submitted to the Court two declarations on behalf of Ms. Sangwan: the declaration of Ankita Sangwan, as well as the supplemental declaration of Ankita Sangwan. We would move to admit both of those declarations into evidence.

It's my understanding that all parties have consented and in lieu of any direct testimony, we're prepared to stand on the declarations of Ms. Sangwan.

THE COURT: All right.

MR. ZAKIA: No objection, Your Honor.

THE COURT: All right. They are admitted.

(Sangwan Declaration received in evidence)

(Sangwan Supplemental Declaration received in evidence)

MR. ZAKIA: I did have a few questions, Your

Honor.

THE COURT: All right. Ms. Sangwan, I'm going to ask you to be sworn in by the clerk, then.

THE CLERK: Please raise your right hand.

Please state your full name and spell your last name for the court record, please.

THE WITNESS: Ankita Sangwan.

THE COURT: All right.

ANKITA SANGWAN, DEFENDANTS' WITNESS, AFFIRMED

THE WITNESS: I do.

THE CLERK: Your Honor?

THE COURT: All right. Could you spell your name for the record.

THE WITNESS: Sure. A-n-k-i-t-a S-a-n-g-w-a-n.

THE COURT: All right. Thank you.

Just for the record, are the statements made in your two declarations that are being admitted true and correct and do you have anything further to clarify any of those statements in the record?

THE WITNESS: They're true and correct to the best of my knowledge, Your Honor.

THE COURT: Okay. Thank you.

You may proceed with direct, then -- excuse me -- with cross, Mr. Zakia.

MR. ZAKIA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ZAKIA:

Q Ms. Sangwan, good afternoon.

Am I pronouncing your name correctly?

A That's correct.

Good afternoon.

Q Okay. Thank you.

My name is Jason Zakia. I'm one of the lawyers for Lordstown. I'm going to ask you a very few couple of questions if that would be okay.

In your declaration, you make reference to a subpoena, a third-party subpoena that's been served in the Delaware action on the debtors; is that correct?

A Yes.

Q And just so that we're clear, you're one of the lawyers representing the plaintiffs in the Delaware action who are the defendants here, right?

A Yes.

Q And are you familiar with the subpoena that you refer to in your declaration?

A Yes.

Q And am I correct that that subpoena is defendants' Exhibit D that was offered into evidence can earlier in this hearing?

A Yes.

Q Now, Ms. Sangwan, I'm going to ask you some general questions. If at any point, you would like to see that exhibit, I'm happy to have it put up on the screen, but we'll see if your memory may be sufficient so that that's not necessary, but jest tell me if it is.

Am I correct that that subpoena directs 45 separate requests for production of documents to the debtors?

A That is correct, but I believe after the Chancery Court order that was passed in June, now we are working with the defendants. We have to negotiate a third protocol --

Q Okay.

A -- so I'm not sure if all those requests are pertinent and relevant.

Q Do you have an understanding to how many of the requests remain pertinent and relevant, following the Chancery Court's ruling?

A I haven't done an analysis, because we are still negotiating -- we are still discussing a third protocol with Lordstown's counsel, so I haven't done an analysis of exactly how many requests.

Q And I think you indicate that, in your declaration, that the document production has not yet occurred, correct?

A Yes, we have not received any documents until now.

Q And so, I'm assuming it's safe that you don't know how many documents will be produced in response to the subpoena?

A We don't know, but we do believe that it will be part of the documents that were already produced to the SEC and the DOJ, so it will be less than whatever they produced to them.

Q Do you know what the volume of their productions to the government was?

A I think they produced around 200,000 documents, so I believe it's around 900,000 pages' worth of documents --

Q Okay.

A -- approximately.

Q I'm sorry, I didn't mean to cut you off.

Now, am I correct that the subpoena also includes a request for a corporate representative deposition from the debtors?

A I believe that we will be -- I believe that we have to look at the documents first. We're not yet sure if we are going to go into depositions, how many people we will be deposing. The list, I'm not yet sure about that, because we haven't seen the documents. I believe we haven't yet noticed a 30(b)(6). I think, on the Chancery rules it's required, but I'm not --

Q Okay. I'm sorry, I didn't mean to cut you off, ma'am.

Please finish.

A No, I'm just saying, I'm not yet sure if we have -- I don't think -- we have definitely not noticed a deposition

notice, a separate deposition notice, but I'm not yet sure of how many or if any.

Q Okay. If you could please --

MR. ZAKIA: If I could ask my colleague -- Your Honor, we may need to share the screen -- to put defendants' Exhibit D up on the screen.

THE COURT: All right.

MR. ZAKIA: Thank you very much.

BY MR. ZAKIA:

Q Ms. Sangwan, is this the -- sorry, if we could -- thank you.

Ms. Sangwan, this is your declaration up here?

A Yes.

Q Okay.

MR. ZAKIA: If we could go, please, to Exhibit D -- defendants' Exhibit D, which is the subpoena.

BY MR. ZAKIA:

Q Is this the subpoena that we were talking about that was served on the debtors in the underlying Chancery Court action?

A Yes.

Q Okay. If we could please turn to page 34 of 93, if we look at the top numbers, the court-filing numbers from this docket.

Ms. Sangwan, is this -- this page 34 of 93 of the

subpoena includes a list of deposition topics; is that correct?

A It does --

Q Okay.

A -- but, again, because of the fact that it requires us to look at requests and, you know, because of the Chancery Court order and the third protocol that's being developed, I'm not sure if the request will remain the same. I assume that a separate deposition notice will cover the requests more in detail --

Q Okay.

A -- but I'm not sure about that.

Q Sorry.

If I understand your testimony correctly, these are the deposition topics that were included with the notice, but you're not sure if those may or may not change in the future?

A Only because these requests are not the same. They'll be less than that though, for sure, because some of these requests are not relevant anymore because of the Chancery Court order.

Q Okay.

A For example, one of the -- so, these requests may be (indiscernible) down further.

Q Okay. As stated in the original request, one of the requests was all -- a witness could testify with regard to

all of the matters covered by the documents produced in response to the subpoena, right?

A I'm sorry, I didn't get that question. Could you please repeat it?

Q Yes, ma'am.

If we look at deposition topic one, any information contained in the discovery materials --

A Yes.

Q -- produced in response to the requests set forth in Exhibit A, that, at least as submitted at the time, would mean a witness could testify as to all the matters covered in the documents produced in response to your 45 requests, right?

A I would assume so.

Q Okay. And at this point, there's no way to know how many witnesses would be necessary to meet the deposition requests that the plaintiffs intend to make up the debtors in the Delaware action, right?

A Yes, I don't know at this time.

Q And is it the case that the plaintiffs in the underlying action will not seek any further discovery from the debtors in the Delaware case, other than what's covered by this subpoena, do you know?

A I don't think so. I think it's only the subpoena and a deposition based on the subpoena.

Q Now, you're aware that -- well, do you know whether the defendants -- sorry -- the plaintiffs in the underlying Delaware action, your clients, will seek discovery or seek to take depositions of any former Lordstown directors that are not defendants in the underlying Delaware case?
A I'm not sure at this point.
Q So, like, for example, do you know who Steve Burns is?
A I do know who Steve Burns is.
Q Mr. Burns is a former Lordstown director that was not Diamond Peak director.
A I do know, I said. Sorry.
Q Okay. And he is not a Defendant in your case, right?
A He is not.
Q But he was involved in making certain of the statements that underpin the complaint that you filed in the Delaware case, right?
A I'm not sure. I think most of the statements were made by the director -- the defendants, the director defendants from Diamond Peak and Diamond Peak itself.
Q So, have the plaintiffs made a determination as to whether they intend to seek discovery or depositions from any of the former Lordstown, legacy Lordstown directors?
A I'm not sure at this time.
Q So that may or may not happen?
A We have to review documents that Lordstown provides.

We cannot make any statement without seeing those documents.
Q Okay.
A Or, at least, I cannot make those statements without.
Q Okay. Am I correct that -- well, have the plaintiffs set forth the amount of damages they seek in connection with the Delaware action?
MR. ADAMS: And, Your Honor, if I can just jump in here quickly? I've tried to be quiet, but this question about damages, now, we're very far afield of Ms. Sangwan's deposition -- of her declaration and in the topics of her declaration. We're getting into legal conclusion and I really feel that this is outside the scope of her declaration.
THE COURT: Why is it relevant, Mr. Zakia?
MR. ZAKIA: Well, I just want to see if we can determine whether the plaintiffs are seeking an amount that would exceed the available insurance coverage, Your Honor, since the defendants here have argued that there is no risk to the company because there's $13 million of insurance.
THE COURT: I'll allow you to ask that question.
BY MR. ZAKIA:
Q Ms. Sangwan, am I correct the amount of damages sought by the plaintiffs will exceed $13 million?
A I don't know, because we haven't -- to my knowledge, we haven't engaged a damages expert. I'm not sure of that. I

don't know what the total damages will be, so I can't give a (indiscernible) answer to that question.

MR. ZAKIA: Thank you, Your Honor.

I have no further questions.

THE COURT: Any recross?

MR. ADAMS: Yes, Your Honor, and I'll be very brief.

REDIRECT EXAMINATION

BY MR. ADAMS:

Q Ms. Sangwan, you were asked a moment about -- about the third-party subpoena served by your clients on Lordstown; do you recall that?

A Yes.

Q And I believe there was also some discussion about the 200,000 documents, roughly, that the company has already produced the SEC; do you recall that?

A Yes.

Q And is it your understanding that Lordstown could simply reproduce the SEC production to your clients to substantially comply with their obligations to produce documents under your subpoena?

A To my understanding, yes. I think Mr. Kroll or somebody has mentioned that -- or at least the (indiscernible) with Lordstown's counsel, they don't want to redo those documents. We don't believe that's necessary

because we believe that, then, they would have produced it to the authorities. They would have been reviewed for privilege and other (indiscernible) already, and so I don't think they would require a re-review. I think, again, this would substantially bring down the costs if they can reproduce those documents, since they've already been reviewed, we would assume.

Q And have you reviewed a copy of the subpoena that the SEC served on Lordstown?

A Yes, I have.

Q And just to reiterate, to date, there have been no 30(b)(6) depositions scheduled of Lordstown; is that correct?

A Nothing has been scheduled for now. There has been no notice for Lordstown.

MR. ADAMS: I have no further questions, Your Honor.

THE COURT: Any further recross --

MR. ZAKIA: Nothing from me.

THE COURT: All right.

MR. ZAKIA: Sorry, Your Honor.

THE COURT: Thank you, Ms. Sangwan. You may be excused.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

THE COURT: I'll hear argument.

Let me close the record. I assume that's all the evidence that's being presented?

(No verbal response)

THE COURT: Okay. I'll close the record and I'll hear argument.

MR. ZAKIA: Thank you, Your Honor.

Jason Zakia for the debtors. Your Honor, last week, I think you framed -- well, I may not have agreed with Your Honor's ruling, I thought you framed the question exactly correctly and I think that is applicable to the matter before the Court today. And what Your Honor said, I think, quoting with your colleagues in Delaware, is that this is really a common sense decision that the Court must make to determine what is the sensible course forward.

And so what I'd like to do is review the facts that speak to whether or not Your Honor should extend the automatic stay to the Delaware action and give the debtors a little bit of breathing room with regard to this piece of litigation.

And as promised, Your Honor, this case does not involve intellectual property or ownership of any debtor assets. So, what does the uncontested factual record tell us concerning the relative harms to be suffered with respect to the debtors versus the plaintiffs, as a result of what Your

Honor does here today?

Well, first, it is undisputed that the defendants in the underlying action all have rights of indemnification against the debtors. It is further the case, and it is not disputed, that the plaintiffs have asserted claims, which include claims for breach of fiduciary of care, which could lead to an indemnifiable claim. One of the things that we saw in the papers is the argument that if bad faith is found, that could preclude an indemnification claim, and that is true under Delaware law.

But the complaint, which is defendants -- or sorry, Debtor Exhibit E, which was filed by these defendants in the Delaware case, is clear -- and that's at paragraph 163 of Debtor Exhibit E -- you will see that among the claims being asserted, it does include a breach of duty of care. And so if a judgment were to be secured against the defendants in the underlying action, it could trigger an indemnity right against the debtors.

Second, it is undisputed that until a judgment is entered, the indemnification rights, to the extent not covered by insurance, could also give the defendants claims against the debtors.

Now, it is also true that there is insurance coverage that is covering the defendants in this action. We do not know, between now and the completion of the case, how

much of those expenditures, one, we can't be sure that insurance will cover all of the expenses that's not giving rise to a claim, although, we do acknowledge they, after the satisfaction of the deductible, they have been covering most of them; and, two, we can't be sure that the total costs under the policy will not exceed the limit, although, I will acknowledge with $13 million left, we are, at least, at some period in the future before those costs would not be covered.

But we heard from counsel today that they haven't determined the amount of the damages. But whatever is left at the end of a trial, will be substantially diminished from the $13 million and there is certainly a substantial risk that the damages being sought will be substantially more than the available insurance. So it creates the opportunity for the defendant, should a judgment be entered against them, to have a very large claim against the debtors. So that's another factor.

In addition to the indemnity, we have pointed out that the -- while the legal claims are different -- this is a breach of fiduciary duty claim under Delaware law, and that is different than certain of the other, specifically the Ohio Securities class action case, in which the debtor is a party -- but it's not the legal claims that are important, Your Honor. It is the factual underpinnings that give rise to the causes of action.

Because when we talk about evidentiary prejudice or the risk of collateral *estoppel* or the risk of *res judicata*, the question is: Is the adjudication of this lawsuit going to be determining issues that could prejudice the debtors in other cases?

And it is undisputed, and we cite, Your Honor, in the breach, overlap between the various complaints. So, for example, Your Honor, if the Delaware class action complaint, which is Debtors' Exhibit E, they make multiple allegations concerning Lordstown's proxy statements and the alleged overstatement of production capabilities. That's in paragraph 12 of these plaintiffs' complaints. It's also in paragraph 186 and 410 of the Ohio Securities action, which is Exhibit D. It's in paragraph 57 of the Delaware Chancery derivative action, which is Exhibit C. It is in paragraph 103 of the Delaware federal derivative action, which is Exhibit B. And it is in paragraph 52 of the Ohio derivative action, which is Exhibit A.

There are also allegations concerning overstatement or alleged overstatement of demand in the form of preorders, and to the extent those preorders are alleged to have been unreliable or unlikely to be converted to actual sales, those allegations can be found in these plaintiffs' complaints at paragraphs 12, 88, and 70. And very similar factual allegations can be found in the Ohio Securities

action at paragraph 278 and paragraph 5, in the Delaware Chancery derivative action at paragraph 64, and the Delaware State Court derivative action, which is Exhibit B, and in the Northern District of Ohio federal derivative action, which is Exhibit A.

So, we cited in the briefs, Your Honor -- I'm not going to make you suffer through all the factual overlap -- but all of these cases turn on alleged false statements made by debtor representatives in connection with the merger. And that same factual threat runs throughout all of these cases, which includes the Ohio class action, in which the debtors are defendants, along with Mr. Hamamoto (phonetic), who is a defendant in both, the Delaware derivative action, in which we're here about today, and a co-defendant, along with the debtors in the Ohio action.

And the allegations also run through all of the derivative claims, which are property of the estate. And so, there is a substantial risk, separate and apart, from indemnification, there's a substantial risk that the adjudication of these claims that are at issue in this case could have an impact on other litigations to try them against the debtor or which belong to the debtor. And one of the purposes of the automatic stay is to prevent that sort prejudice and that is exactly the type of prejudice which courts have used as a basis to extend the stay.

Three, it is also uncontroverted that the debtors are incurring administrative expense in connection with meeting discovery obligations that are personal to them, not related to the indemnity that runs to the D&O defendants, but which are directed at the debtors and to which the debtors, if they actually proceed, will be required to respond.

Now, yes, counsel makes the point, they don't need -- defense counsel doesn't need to look at the documents. If Your Honor looks at the vice chancellor's decision, which has been submitted by the defendants as Exhibit E -- it's the transcript of that argument -- the vice chancellor clearly ruled that the defendants need not simply turn over all the documents that were produced to the SEC and the DOJ.

And the vice chancellor ruled that way because she correctly understood that it is -- yeah, it's cheaper if you don't look at the documents. It probably would also be cheaper if you sent a witness into a deposition unprepared or without a lawyer or if you let the plaintiffs' lawyers just come to your office and take what you want. But that's not the way litigation works.

And so, even though the debtors are interested in preserving costs, they should not be forced to sacrifice the best interests of their estates by producing irrelevant, highly sensitive documents that are not directed. And the

vice chancellor specifically ruled that there need not be a turnover.

If the plaintiffs or the defendants in this action or the plaintiffs in the underlying action have an issue with the way discovery is being conducted by the debtors in the underlying action, obviously, the vice chancellor has jurisdiction over that case and they can go to her for relief. But to assert that the legitimate harm that the debtors are trying to avoid of incurring substantial legal fees in accordance with meeting their discovery obligations can somehow be dismissed by just giving the plaintiffs free ride over all of their documents, I think misses the mark.

And then, finally, Your Honor, in addition to the costs, in addition to the risk of indemnification, in addition to the evidentiary prejudice, there is an issue of distraction of management and the focus that would be necessary to address this litigation at the expense of a number of other bankruptcy- and restructuring-related tasks, which the debtors and their senior management are dealing with right now, including the sale, and including all of the things that a new debtor must deal with. This, again, has been widely recognized as a legitimate basis and a harm, which the Court should consider when deciding whether to extend the automatic stay.

Let's take a second and look at the flipside of

the coin. What is the harm to be suffered by the defendants here or the plaintiffs below -- I'm sorry, I keep saying "below" -- it's not a lower court; it's just a different court -- the plaintiffs in state court action, should the Court grant us the relief that we seek. All we're seeking, Your Honor, is an order extending the automatic stay to pause that action for the pendency of the bankruptcy case.

As you heard from everybody, and I'm sure Your Honor agrees, this case needs to move quickly. This is not a case that is going to stay in bankruptcy or could stay in bankruptcy for years. We're talking about a limited number of months in which these debtors are going to try and find a value-maximizing solution that may include trying to find a global resolution to the Securities litigations.

Like Mr. Lauria said with the sale, we can't promise Your Honor that we will be successful, but we would like the opportunity to try. If we are successful, any success will mean we came to a resolution that was approved by this Court.

If we can't find a successful resolution, the plaintiffs' claims will still be there in three or four or five months when the bankruptcy process is completed and they will have suffered a relatively short, temporary delay.

But we're not seeking any order that does anything to impair, impinge, or take away their claims. So we have a

litany of harms that the debtors may suffer balanced against a relatively short delay to see if we could use the breathing space, which is the purpose of the Bankruptcy Code, in order to allow us to find a workable, global solution that's in the best interests of these estates.

So, I think the relief that we're seeking is limited, particularly, given the nature of these Chapter 11 cases, and the fact that this is not the type of case that's going to last forever. So we're seeking a relatively short pause of litigation.

Now, Your Honor, I tried to focus on the factual issues and how that fits into Your Honor's deliberations. If we look at all of those facts, they run throughout the legal standard. So we believe we've established an identity of interests between the debtors, both as a basis of the evidentiary prejudice and on the basis of the indemnification risks, as well as establishing the 105 factors.

We are very early in the Chapter 11 case. We are just undergoing our sale process, so at this point, we believe that we have met the Court's standards: the relatively low threshold the courts have set for a likelihood of success on the reorganization, and then the other factors that the courts consider go to the balancing of the competing harms, which we believe we also satisfy with the reasons that I explained.

So, with that, Your Honor, I'm happy to stop talking and answer any questions that Your Honor may have for me.

THE COURT: I have no questions.

MR. ZAKIA: Thank you.

THE COURT: I'll hear from counsel for the plaintiffs in the Delaware action.

MR. JAFFE: Good afternoon, Your Honor.

Am I coming through loud and clear?

THE COURT: You are.

MR. JAFFE: Your Honor, this is Henry Jaffe from Pashman Stein. Your Honor, I am here today on behalf of the plaintiff in the Delaware class action suit and I'm here to oppose the preliminary injunction.

Your Honor, I want to start out by talking a little bit about the nature of this action and what it involves and then I'll branch out to discuss why there are no unusual circumstances here for the Court to extend the stay, nor is there reason for the Court -- extraordinary circumstances for the Court to issue an extended stay under 105.

Your Honor, the crux of this matter, the complaint here talks about breach of fiduciary duty claims that arise as a result of the unique nature of what they call an "SPAC merger," which is special purpose acquisition company.

Here, Your Honor, the uniqueness of that action creates a situation where there's an SPAC sponsor that acquires its interests for a relatively (indiscernible) amount, $25,000 or so in many cases -- and that was the case here -- but have the opportunity when that SPAC merger is (indiscernible) to have an enormous share in the reorganized entity worth the amount of its original contribution. So, there's the incentive here for massive profits.

And what happened here, Your Honor, is there's allegations and complaint of breach of fiduciary duty in that with this incentive structure, representations were made to shareholders that they relied on not to redeem their shares, which they're entitled to do in an SPAC, but, instead, receive merger consideration. Here, the proxy that was put out was allegedly misleading and false and had statements regarding an inability of the debtor to be able -- false statements regarding the ability of the debtor to manufacturer products on time and also promises of orders.

Your Honor, it's very important to note, here, a few critical things. First of all, as you know, the debtors are not defendants in this action. This is not a derivative action. This action will not be directly binding on the debtors in terms of collateral *estoppel*, number one.

Number two, Your Honor, not all of the defendants are direct -- pardon me -- Diamond Peak directors,

predecessor to any directors. All but one of them no longer have any involvement in the debtor. This is the classic case against directors of a nondebtor.

Finally, Your Honor, we're not seeking any relief against the debtors.

And lastly, Your Honor, the one defendant, there is one crossover defendant between these two pieces of litigation, and that crossover defendant is Mr. Hamamoto, who is a director. He is not an officer who would be distracted. He is not an officer involved in the day-to-day responsibilities for the company.

Quite literally, Your Honor, this action is not subject to the automatic stay and the standards are not met here for the Court to extend the stay.

But I want to talk about something that happened, Your Honor, that was not in our initial papers, but in preparing for this hearing, we identified that last year, the Court of Chancery had an opportunity to hear almost exactly the same arguments in connection with a motion by the defendants in the Chancery action, to stay that action in favor of the Ohio action.

And, Your Honor, the Court refused to do that and it refused to do that for many of the same reasons why this Court should not. First, in addition to the fact that there's almost a complete difference in defendants here, the

plaintiffs aren't the same. There's mass amounts of plaintiffs here related to the Securities action. Your Honor, the Securities action is a disclosure action; it deals with disclosures that were made and it covers a much longer time period concerning the purchase and sale of stock.

Our actions are redemption actions. It's about the narrow issue of what statements were made in connection with the proxy and whether those statements were false and misleading and whether, in reliance on that, the shareholders didn't redeem their shares. The other guilty people who purchased and sold stock over much longer, broader periods of time, number one.

Number two, and, Your Honor, this is absolutely critical, the two actions the Court of Chancery found are fundamentally different. Although the Court noted that they have facts in common, the issues are distinct. The issues in the Chancery action deal with narrow issues of breach of duty of loyalty claims as to whether or not there was a duty of loyalty owed, whether that duty was satisfied, and whether or not if that duty wasn't satisfied in an interested-director transaction, the burden shifts and becomes an issue of (indiscernible). Those are the issues in the redemption action in the Court of Chancery.

And the other action, those are disclosure actions. The findings are not the same. In our action, the

remedies are different than in the other action and the Court of Chancery found that, too. In addition, in terms of the elements of the actions, they're very different. In our action, a duty of loyalty could be found as breached without finding scienter. In the Securities actions, scienter absolutely must be found.

In terms of the remedies, the Court found the remedies were entirely different. The difference in recovery in the Ohio action is the inflated prices paid by shareholders for shares, as compared to their actual value. The remedy in the Delaware action seeks to recover the difference between the redemption price that would have been offered and the merger consideration that was paid. Very important, Your Honor.

The Court found that the Delaware Chancery action, it dealt with Delaware concerns -- and this is huge -- was not a rebranding of Securities claims about material misrepresentations, merely of fiduciary duty claims. They're very different.

Finally, Your Honor, the Court said that it had a substantial interest in addressing the issues in the Delaware action. Another issue that wasn't mentioned by the Court of Chancery, because it was a while ago, but is relevant here, Your Honor, is that this action is much farther along than the other action. This action is almost through discovery

and a trial is scheduled for next year. Nothing is emergent or imminent in the sense of a decision, but we're far along. The idea that this would be stayed while that matter, which is still at the motion to dismiss stage, can just simply stay in abeyance, is not fair or reasonable.

Your Honor, there are a number of issues that were raised here in terms of whether the stay should be extended and I think the testimony today of Mr. Kroll was very helpful, because one of the issues here is that the debtor has claimed that this Chancery action will somehow interfere with their restructuring efforts. But let me respond to that.

Again, the defendants in that action are capably represented. The debtor is not a defendant in that action. And in terms of ongoing distraction, Your Honor, Mr. Kroll basically said, You know, it's another thing to deal with. There was no (indiscernible). There was no credible or real testimony about what people would be doing day-to-day to deal with it. He only had half knowledge of the matter. He only read the complaints recently. The idea from that testimony that this case is anything more than having lawyers go do a document review and maybe -- not definitely -- maybe prepare witnesses is not something that is in any way going to distract the debtors from their current tasks.

They've got -- the defendants have counsel. The

debtors may have to produce some documents, but, Your Honor, I will note, it's been almost two months since that motion to compel was granted in large part and we sit here today and there have been no documents produced. The idea that the debtors can sit here with a document production that they are going to have to fulfill and that is not seriously distracting on management in any credible may, that that should be the reason for holding this up, particularly where we know that this is an already-completed document production. I realize there may be some review by lawyers, but this is not a case where everybody has to go back through their files, figure things out, who's got the documents, what server are they on; all of that was done in the DOJ and SEC actions. Those obligations have been met. This is a matter of lawyers going through reviewing documents. The management is not going to be doing that; their paid counsel is going to be doing that.

In addition, in terms of this idea that the defense costs here are really being borne by the estates, that is, quite frankly, it's ridiculous. The debtors paid a $500,000 deductible. Since then, all the testimony is when they submit a bill with respect to the directors defendants' costs and fees, those bills have been paid. The defense costs have been undertaken. Those monies are being reimbursed. They're not coming out of the estate, number

one.

Number two, we are a long, long, long way from exhausting those policy proceeds. There are $13 million left. We don't know what the damages are yet, but we sure as heck know there's a lot of money and there should be way more than enough money to spare to get this through the trial and there may be proceeds after that.

And something else I might note, too, you have to remember these are actions against these defendants. These defendants may have had deep pockets in themselves. The idea that we're going to be stayed so that we can't go and access policy proceeds, and if it turns out they're not enough, basically go after the defense, some of whom may have millions and millions of dollars, is not reasonable.

Now, Your Honor, while it's true that there are these policies out there for Lordstown, there was some allegation in the briefing that the policy proceeds were estate proceeds. I didn't hear counsel really make that argument at oral argument; however, they are not.

The existing policy out there is for Diamond Peak; that policy is for the benefit of officers and directors. And this is important because it gets to some of the case law we discussed. The debtors are not claimants under those policies and that's another reason why this should go forward, notwithstanding the fact that the debtors may pursue

other claims, that these other parties may pursue other claims. This is not estate property that we are looking to, to get -- to make sure advancement costs are being forwarded and to make sure that there's money there at the end of the day to pay a judgment.

Now, Your Honor, there's this whole idea there about prejudice and *estoppel*, again -- and I'll get to the issue about identity of interest in a moment -- but the debtors are not parties to this litigation. They will not be stopped. There are so many differences between the defendants -- there's almost no overlap in the defendants at all -- between defendants and relevant causes of action and burdens of proof, the idea that this is going to unduly prejudice the debtors or other parties in the litigation is not reasonable and it's highly, highly speculative.

Your Honor, when you look at the test that this Court has used, the four-part test to determine whether an action can be pursued against an officer or director, you really see how inappropriate it would be to extend the stay here. Let me -- the test is from Continental Airlines and Midway Games. There are four factors in that test. First, the involvement of directors and officers in the reorganization process. For four or five of them, there's no involvement. For the fifth, it's an independent director. There is no burden there.

The burden imposed on them. Again, there's no great burden imposed on them.

The idea that the debtors' assets would be depleted here. There's a potential document production, and by the way, the notion that it's going to cost $2 million to do a document production and maybe prepare people to testify at some depositions, it's astonishing. That's roughly the burn of the plaintiffs -- I'm sorry -- the defendants in the D&O litigation thus far, which has been pending for a long time. The idea that the debtors are going to incur those fees and expenses in this short period of time -- I know what those projections are. They don't seem reasonable, and by estimate, they seem to be highly inflated.

In addition, Your Honor, the debtors' assets are not going to be depleted here. We've got fees and costs of these parties covered. Sooner or later, Your Honor, the debtors are going to have to produce these documents. They've dragged their feet thus far. That's going to cost what it's going to cost. And might I add, there is clearly money in the estate that is going to pay that, whether it's now or later. The fact that they don't want to have their lawyers incur these fees now is not there. They're really trying to hold things up to try to put together some settlement, which by the way, Your Honor, I will mention, we are not part of, we haven't approved, we're not involved in.

And so, I don't want to hear, Well, we're doing this for your benefit, because we're going to wrap things up. Staying litigation against nondebtor defendants is not to our benefit, especially here, where there are policy proceeds available to satisfy those claims.

But you know what's interesting, Your Honor, if you look at this four-part test and you take a step back, what you see is this litigation, to me, it's not about protecting the estate -- that's a false concern -- and it's really not about prejudice. It's, to my mind, about protecting one common Diamond Peak Lordstown director, Mr. Hamamoto, who's trying to thwart the plaintiffs' rights against him and the rights of other -- the rights of the plaintiffs against the other four Chancery defendants, who are nondebtors and aren't even involved in this company anymore.

Now, Your Honor, the debtors do make an argument that there is some shared identity of interest. First of all, I completely agree with this notion that because there may be similar facts, geez, you know, there's terrible prejudicial effect.

As I laid out, and related to the Court's stay opinion, there are substantial differences in this action in every single way. It's not necessarily going to be binding. It's not necessarily going to have any type of effect on any

other litigation and the debtors will not collaterally be *estopped*.

Second, Your Honor, and this is important, they've talked about indemnification claims. There is no argument that there is a potential indemnification claim back against the estate; however, if you look clearly at the allegations, a breach of loyalty, there is a very substantial possibility that when we finally get to where we're going, there could be an allegation of bad faith. And if there's an allegation of bad faith, as a matter of law, under 8 Delaware Code 145 and general corporate law, there will be no indemnification.

And because of this, this is not one of those cases where a finding here will necessarily result in a finding of indemnification, with respect to the plaintiffs' claims, with respect to the director defendants' claims against the debtor.

Now, Your Honor, the law supports our right to proceed with this litigation and the stay should not be extended. Let me give you some examples. Your Honor, in both, Reliance Acceptance Group and Unimarts, which is Your Honor's opinion, the Courts there -- and the Reliance was a District Court opinion -- refused to extend the automatic stay to claims against nondebtor parties, even though those parties had potential indemnification claims back against the debtors.

Your Honor, what's important about Unimarts, and I think it's super relevant here, is that there, Your Honor said, In making a determination as to whether a Court should stay cases where there's an indemnification right, the Court (indiscernible) a much more holistic approach, Your Honor. You looked at whether the indemnification right and the granting extending the stay would be consistent with the purpose of the stay itself to suspend actions that posed a serious threat to the debtor -- corporate debtor's reorganization.

Your Honor, there is absolutely no serious threat to the corporate reorganization here and for that reason, there's every reason to deny this motion and allow the case to proceed.

Your Honor, in Reliance, the District Court reversed Judge Walsh's decision extending the stay there, even though there were potential indemnification claims back against the debtors, and also, by the way, possible insurance claims and claims of prejudice and claims that there would be *res judicata*. The Court said, No, we are not going to extend the stay. We know there are these possible indemnification claims out there. We're not going to do it.

The FPSDA case that we cite, there, the Court also refused to extend the stay to litigation against nondebtors, even though those debtors had potential indemnification

claims against the debtors under Delaware law. The Court there found that, here, that the issue of enforcing of indemnification rights to unresolved questions of the nondebtor's conduct -- and that's what we have here -- unresolved questions of nondebtor's conduct, the Court did not extend the stay.

So, no, notwithstanding the arguments you've heard here today, notwithstanding the fact that there are some cases that, in my view, wrongly say that the mere possibility of indemnification rights is enough for a court to extend the stay, it really isn't.

Now, in terms of the cases that the debtors cite in their brief, Your Honor, those do not help their cause. Let me give you a few examples. SN Liquidation, in that case, which is plainly distinguishable from this case, the Court didn't extend the stay, dealing with claims against nondebtors. In that case, unlike the policies that we have here that cover these losses, in that case, the debtors were claimants against the policy. So the Court said, You know something? Not only is the policy estate proceeds, not only is the policy property of the estate, the proceeds are property of the estate.

Your Honor, a bunch of the other cases the debtors cite deal with situations like mass tort cases; cases where competing mass claims, indemnification obligations, competing

rights to insurance policies. That is the crux of those cases. In those cases, it is almost impossible to get to a plan of reorganization without putting a stop of things, figuring out who's indemnifying what. That is the very heart of those cases.

That's not this case. This case doesn't turn on the outcome of this case and the really minimal "it's just some other thing I guess we have to do" disruption here is not enough. This is nothing to do and is in no way like those mass tort cases.

Let me give you an example of a case that they cite, which is W.R. Grace v Drakarian (phonetic). In that case, Your Honor, there was an indemnification claim back, but in that case, unlike this case where it's not clear whether those indemnification rights will arise, in that case, the Court said, the indemnification right was absolute. It's not absolute here.

They also cite Madoff case for the proposition that, you know, you should put a hold on things and let us sort things out while we try to figure out what insurance rights are and try to come to some deal. But, Your Honor, Madoff had nothing to do with this case.

In Madoff, the plaintiff there is pursuing a nondebtor to recover property that the trustee said the proceeds were a fraudulent transfer; in other words, they

were trying to get estate property. That's not this case. Our clients are seeking estate property.

And it goes on and on. In CD Liquidation, there, the debtors have said, listen, CD Liquidation supports the proposition that you shouldn't let these nondebtors usurp litigation from the estate.

Well, first of all, we're not usurping anything. In that case, the plaintiffs in that case were seeking to pursue claims that were derivative claims. Our claims aren't derivative claims; they're direct claims.

So, Your Honor, the cases that we cite and the facts support what we're doing and their cases, you can take a little look at them, they don't. If you look at the totality of this case and whether or not there's a (indiscernible) to reorganization, there isn't. And that -- those issues, indemnification of interests, interference in debtors' reorganization, not the case here.

We get into the last thing, which is the standards for a preliminary injunction. Your Honor, there are four standards. I won't get into the reorganization standard because I know it's early in the case. But the second standard, and one someone needs to meet in order for the Court to even consider the last two standards, are whether there's irreparable harm.

Where is the irreparable harm here? Like, they

want to talk about balance of harm -- and I think that favors us, too -- you don't even get there until you find irreparable harm. Where is the irreparable harm in allowing us to pursue nondebtor parties in claims against them in litigation that's subject to insurance, where defense costs are being covered and where the indemnification rights are, at best, unclear?

There isn't irreparable harm. And it isn't immediate, by the way; our trial is not until March. So my view of this is since we're this far in the litigation, don't pull the plug now. Let us go -- if they want to -- what's going to happen, Your Honor, is if you pull the plug now here, what's going to happen in the settlement discussions, we haven't been involved in those. Clearly, they've been going on. If you pull the plug here, we won't be involved. Something is going to happen and we're going to be presented with a proposal that I suspect we aren't going to like a lot.

So if they want us to be involved in discussions, they should be forced to make sure that their insurance policies are there and the proceeds aren't estate proceeds, are there to pay defense costs. If they want to approach us, let them approach us. They haven't done it yet, but there's no irreparable harm now.

In terms of balance of the harms, I disagree. The balance of the harms here favors us. We are pursuing

nondebtor defendants and we have a right to go after them.

And by the way, this whole issue with the stay -- oh, just stop now -- why? Why would we stop when it's being defended? Why would we stop when the debtor has a current obligation to respond to a subpoena where it hasn't produced a document in like a month and a half? Like, we are being held up and they should be required to produce those documents -- by the way, it's going to be an attorney task -- and allow us to liquidate our claims.

And, by the way, one other thing about that, again, the debtors are sitting on a ton of cash. The idea that they can't pay attorneys to do a document production is ridiculous.

Finally, Your Honor, there's absolutely no imminent harm here whatsoever.

In terms of the public interest, Your Honor, again, it favors our client. The public interest is that the party has a claim against the nondebtor and sources of recovery against non-estate proceeds and nondebtor parties, they should be permitted to go forward.

And in ending, Your Honor, I want to emphasize that in its opinion, the Chancery Court says Delaware -- and I agree with this -- Delaware has a really significant interest in having this SPAC merger, breach of loyalty claim heard and decided, and for that reason and the other reasons

I just discussed, we request that Your Honor deny the motion.

THE COURT: All right. Any response, Mr. Zakia?

MR. ZAKIA: Yes, please, Your Honor. Thank you.

So, Your Honor, I'm a proud bankruptcy lawyer. I'm not a Chancery Court lawyer. And we're not here to try to re-argue the motion to stay, which was decided by the vice chancellor.

I will simply point out that the question that she answered is fundamentally different than the question that Your Honor is being asked to answer. And I think that actually was implicit in a number of the points counsel made. So, as I tried to preview, the issue by the vice chancellor focused on the legal elements of the claim, because the motion presented before her argued that her case should be stayed until the Ohio litigation was resolved because the Ohio litigation would moot -- would answer the questions she needed to answer and, therefore, it was the better forum.

That is fundamentally different than what Your Honor is being asked to decide. I acknowledge that there are differences in defendants and I acknowledge that there are differences in legal claims. And that may have been critically important to the argument being made to the vice chancellor on the motion to stay.

But what counsel -- and I don't know if he meant to acknowledge it or not -- but he said the Ohio case is a

disclosure case and then he pointed out that this case was about redemption and it was about false statements made in the proxy statements, and that is a hundred percent true. And the false statements at issue in this case are the debtors' statements, which are the same false statements -- and I won't make Your Honor make me go back and go through my list of all the paragraphs -- but if you compare the factual allegations, not the legal theories, which the Delaware Chancery Court might be uniquely suited to answer a question of Delaware law, I am not disputing that, but when you look at the factual underpinnings of the case, the question of whether or not the debtors' statements were false, why is it at the heart of both of these claims?

So, the question is not as it was for the vice chancellor, will the resolution of the other actions moot the need to resolve this case -- it's going to answer all of our questions. The question here is, simply, will the adjudication of these issues cause evidentiary prejudice to the debtors if those answers are resolved?

And what's really interesting about this, Your Honor, is we kind of have both sides on it. On the one hand, we are a defendant in the Ohio litigation, which accuses us of making false and misleading statements, which are the exact same statements which are issued in the Delaware Chancery case. And one of the defendants who's accused in

participating in that, and who in Ohio's actions are being alleged to be imputed to the debtors, is a defendant in both cases. We also have a number of derivative claims, which upon the filing of the bankruptcy, became property of the bankruptcy estate, which are on the other side of the action.

So whatever happens with the adjudication of these claims, it is possible that the answering of those factual questions, which run throughout all of these cases, could have an impact on the debtors and on the estates. And, again, Your Honor, that's why the relief being sought here is very narrowly tailored, which is to give us a breathing spell to put that action on hold so we can determine a path in bankruptcy as to how to deal with that in Chapter 11.

I'm not going to respond to all the points that counsel made with regard to what was really sounded like a motion to compel production of documents in the underlying case. Should your, you know, should that case continue, the vice chancellor can certainly deal with that. And I don't think any of that is relevant to this, except for one thing, Your Honor. What we heard from counsel is very clear: Should this case proceed, there's going to be a lot of litigation concerning the discovery obligations of this debtor and that is going to cause a cost to the debtor because it is the entity that is the repository of many of these documents that are being sought. So it's very easy for

counsel to say we have a bunch of cash and he doesn't think it will actually cost $2 million, but there is no question that the debtors are going to be at the center of producing the evidence that will be central to the resolution of that case. And what it sounded like is there's going to be a lot of dispute concerning that document production and every dollar that goes to fund that budget is one dollar that this estate never gets back.

I do agree with counsel on one thing. I think Your Honor should take a holistic approach, and that's where I tried to start. I think if you look at each of the issues at issue in this case, so we have a risk of indemnification, which would create, potentially, a very large claim against these debtors should a judgment be secured. LTL Management, which we cite to in the papers, was very clear. That was also a Securities fraud case, in which the Court extended the automatic stay to stop a Securities fraud case against nondebtor defendants, recognizing that as with most Securities fraud cases, there is a question, depending on how the matter is resolved, as to whether indemnification will be available or not available. That is not yet been determined and it's not knowable until after a decision is rendered, but there's certainly a risk and it is not the case that there has to be a certainty of indemnification for that to create the identity of interest.

We do have a certainty of expenditure and wasting of estate resources. We do have a certainty of depletion of the insurance proceeds. And while it is true the proceeds at issue in this case are not payable to the debtor, they do cover individual defendants that are defendants in other actions, including derivative actions, which, hypothetically, if there were a judgment to be rendered on those actions, those proceeds may be available to be recovered by the estate.

And then, finally, there is the issue of the need for the company to participate. Current management, not just Mr. Hamamoto, as a director, but current management's need to participate and supervise the actions of its counsel with regard to managing its involvement in this case, which, again, is substantial.

So I think when you look at this holistically and you compare it to the need to, you know, pause their action for a few months, there is no question that the balance of the harms favors the debtors, and we, therefore, ask the Court to extend the automatic stay.

THE COURT: Well, let me make my ruling.

The standard in seeking to extend the automatic stay to nondebtors is different fundamentally from the Rexene factors, which is just balancing the harms between a debtor and a party who may be seeking relief from the stay so it can

pursue an action against the debtor. And I think that the debtor has a high burden in that case, higher than defending a motion for relief from the stay.

The first element is whether the debtor shares a common interest with the nondebtor defendants in the action, such that the suit is, in reality, against the debtor, and that the debtor is compelled to appear and defend it. Not because there's an indemnity, but because it will, in fact, adversely affect the debtor.

It's clear on its face that the Delaware action does not -- well, I won't say it's clear on its face, because it isn't -- the argument is that the Delaware action does not affect the debtors at all, other than to respond to discovery. I'm not convinced that that is correct. The Delaware action is premised on false statements and actions of directors at a time when they were directors of the debtors' predecessor, I guess. And as the debtor argues, those actions and statements could be attributed to the debtor, which may not -- will not have any impact, perhaps, in the Delaware action, but may have a negative impact on other actions that are pending against the debtor.

And for that reason, the debtor feels it has to appear and -- it has to take actions and assist the defendants, I assume, in the defense, or at least its lawyer has to be involved, but that is not entirely clear to me.

The testimony did not establish that. Really, Mr. Kroll's -- the only testimony in support of what the debtors must do in a Delaware action is simply to respond to the discovery that's been pending for some time, and that there's minimal involvement of the debtor or its management, in that, it will really require, based on Mr. Kroll's testimony, the review by counsel and the production by counsel. And that even that has been suggested as not really true, because these documents have already been produced to the SEC and, therefore, must have been reviewed by counsel. And I accept that, because I can't imagine that the debtor would have permitted the production of documents without counsel review.

So, currently, I'm not convinced that the debtor -- debtors' interests and the defendants' interest or that the debtor and the defendants share a common interest in the suit, such that the debtor feels it has to appear and defend that suit. The debtor argues that there is -- that the defendants have indemnity claims against the debtor and, therefore, the debtor will have to be involved, if only to reduce costs or will have to be involved because it would have to pay any claims of the defendants to defend and/or pay.

I mean not clear that that is true because any decision against the defendants in the Delaware action may be such that it does not give rise to an indemnity claim. But I

don't have to decide this. I only have to decide that any indemnity claim is covered by insurance. The insurance carriers are defending. The insurance carriers have not stated that they will not cover these claims and there's $13 million of insurance left at this point, it's certainly enough to allow the debtors to take the only action that is imminently required of that, and that is to produce the documents.

So, I do not find the third element or the fourth element of irreparable harm to the debtor if the stay is not extended at this time. Again, the claim is covered by insurance. The debtor has little involvement at this date and it's not clear that the Delaware action will give rise to indemnity claims and the trial is not on the immediate horizon.

Balancing the harms, I think that since this action is against nondebtors, the plaintiffs do have the right to proceed with that and would be harmed if they're not permitted to proceed. The harm to the debtor is less clear to me. It is not clear that any ruling in the Delaware case could impact the derivative actions or the other pending litigation.

But principally, I'm persuaded because at this point, there's not going to be any ruling. At this point, we're still in discovery. The trial is not until next

spring. The debtors have plenty of insurance to cover its minimal involvement at this time, which is just to respond to discovery.

I am doing this on the assumption that there will be deposition notices only of a 30(b)(6) witness necessary to identify the documents or respond to questions about the documents. If that assumption is incorrect, the debtor is free to file another request to extend the stay to these defendants and, therefore, all that I understand that I am doing at this point is denying a preliminary injunction, rather than deciding the adversary completely.

The public interest, which is the last factor, I think that's encompassed in others, I don't see that the automatic stay or 105 provides a basis to extend the stay to save the debtor from producing documents that have already been reviewed in other litigation and can, in the Court's opinion, be produced relatively easily. I understand that counsel will do its duty and review those documents again because the prior production was in connection with other, different requests, but I don't think it's going to exhaust the insurance by any means, nor take an extended period of time. And based on Mr. Kroll's estimate, the cost of that review is not expected to come anywhere close to the limits of the insurance.

So, I'm going to grant -- excuse me -- I'm going

to deny the preliminary request to enjoin this and stop the discovery, because I think that is all that is imminent.

MR. ZAKIA: Understood, Your Honor.

THE COURT: All right. I'll ask the parties to settle a form of order and submit it under certification of counsel.

MR. ZAKIA: Thank you, Your Honor.

THE COURT: Mr. Lawall, I'm sorry, did you wish to be heard?

MR. LAWALL: Your Honor, it was on an unrelated matter. When you -- if you would give me two minutes after you complete this matter?

THE COURT: Okay. I'm done with that matter.

MR. LAWALL: Thank you, Your Honor.

Good afternoon, Fran Lawall on behalf of the Committee with Troutman.

Your Honor, at the last hearing, you had raised some concerns, which the Committee took to heart about the Committee intervening in the (indiscernible) and we just wanted to bring two issues to your attention, because we don't want to do anything without you being advised.

After the hearing last week, the BakerHostetler retention application was filed. BakerHostetler has been representing the debtor in connection with the Karma litigation. When we reviewed that retention app, we realized

that they were retained back in 2019 and they were representing both, the debtor and the nondebtor defendants in the action.

That gave us some concern based upon some public allegations, with respect to possible actions by some of the former officers or directors, which might creating a conflict between the debtor and those officers and directors and so we wanted to explore that a little bit further.

The second concern we had is, as Your Honor may have heard, there was a protective order that was issued in the California litigation, which is preventing the Committee from reviewing any of the documents in the California litigation. The debtor, on behalf of the Committee, had asked Karma to join with it, I believe, to lift that, so that the Committee could at least review those documents, and at this point, Karma has refused to do so.

But we're at a point where we're not able to review the documents and we're still working through this conflict issue with Baker. Now, it may be resolvable, but it is an issue that could give rise to the need for the Committee to intervene in the California litigation, which we don't want to do so, but we also recognize that if the California litigation were to go awfully wrong, it could very much dilute the unsecured creditor pool to the point where it could have significant prejudice.

We've made no decision at this point, Your Honor, but given your strong opinion last week, I just wanted to bring this to your attention. I don't believe that there's any action item for this at the moment, but we are trying to work through. We're going to have a call this afternoon with the Baker firm to see how we can work through the issue. Hopefully, we'll be able to, but again, the protective order also gives us some pause because we don't have any transparency into the California litigation, but we are working on it.

That's all I have, Your Honor.

THE COURT: All right. I don't think there's any necessity for anybody to respond until there is a request that I do anything differently.

All right. Well, thank you for advising.

MR. LAWALL: Thank you, Your Honor. Thank you for hearing me out.

THE COURT: All right. I think we're done, then, Mr. Zakia?

MR. ZAKIA: Thank you for your time, Your Honor.

THE COURT: All right. We'll stand adjourned, then.

COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 4:43 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling August 4, 2023
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams August 4, 2023
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski August 4, 2023
Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable